IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

ARBITRATION PETITION NO.70 OF 2006

...

Mr.Satish Khanna ...Petitioner

v/s.

M/s.R & S Combines ...Respondents

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Mr.H.N. Thakore i/b Thakore Jariwala & Associates for the Petitioner.

Mr.Rajiv Narula i/b Jhangiani Narula & Associates for the Respondents.

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CORAM: D.K.DESHMUKH, J.

DATED: 3RD APRIL,2006

P.C.:

1. This petition is filed under Section 34 of the Arbitration & Conciliation Act. The Petitioner by this petition challenges the award made by the arbitral tribunal, which consists of members of the trade. It appears that the Petitioner has given distribution rights exclusively of his movie to the Respondent. The dispute arose between the parties. The matter was referred to the arbitral tribunal. The arbitral tribunal made an order on 30-9-2005. Perusal of that order shows that the Petitioner accepted that he has received an amount of Rs.28,00,000/- from the Respondent. It appears that he also was willing to permit the Respondent to distribute the movie by delivering the prints of movie "Mohabbat Ho Gai Hai Tumse". Therefore, on this agreed ground, the arbitral tribunal on 30-9-2005 made an order which reads as under:-

> "After hearing the parties and going through the papers submitted by them, the Committee directed the Producers to effect delivery of

> prints of the picture Mohabbat Ho Gai Hai Tumse to the distributor on or before 30th November, 2005 failing which they should refund the underproduction amount of Rs.28,00,000/- to the Complainant distributor along with interest @ 24% calculated from the date of default till the date of final payment."

2. Thus, by the above quoted order the arbitral tribunal directed the Petitioner to deliver the print on or before 30th November, 2005. Consequence of the failure was also provided for namely that the Petitioner will have to pay an amount of Rs.28 lakh with interest. According to the Respondent, there was failure on the part of the Petitioner to deliver the print as per the order of the Arbitral Tribunal dated 30-9-2005. Therefore, he addressed a letter to the arbitral tribunal. That letter is dated 1-12-2005. Copy of that letter was forwarded to the Petitioner. Admittedly the Petitioner has received that letter. In that letter the Respondent states that the Petitioner has failed to deliver the movie as per the order of the arbitral tribunal. As a result of the complaint made by the Respondent, the

Association of Indian Motion Picture Distributors addressed a letter dated 13th December, 2005 to the Petitioner. This letter was again admittedly received by the Petitioner. Along with that letter, a copy of the letter dated 1-12-2005 from the Respondent to the Trade-body was enclosed and it was stated that since as per that letter the Petitioner has failed to deliver the prints of the movie on or before 30-11-2005, as per the decision of the arbitral tribunal the Respondent is claiming the refund of the amount. Therefore, the trade-body informed that they are referring the matter to Adjudication Sub-Committee the meeting of which was to be held on 22-12-2005. The Petitioner was expected to remain present with all relevant papers.

3. It is clear that now the point to be decided by the arbitral tribunal was whether the Petitioner had failed to deliver the prints of movie as per the directions of the Arbitral Tribunal dated 30-9-2005. Admittedly, before meeting of the arbitral tribunal the Petitioner did not remain present. The arbitral tribunal, therefore, made an award narrating the fact, accepting the case of the Respondent that there is failure on the part of the Petitioner to deliver

the movie on or before 30-11-2005, and therefore, directed the Petitioner to pay an amount of Rs.28,00,000/-. It is this award which is challenged in this petition.

4. The first challenge is that the constitution of the arbitral tribunal was changed without notice to the Petitioner and therefore the award is invalid. In support of this submission the learned Counsel relied on the order dated 15th December, 2003 passed in Chamber Summons No.850 of 2003 in the case of M/s.Pride of Asia Films v/s. M/s.Essel Vision.

5. In the present case, in my opinion, no fault can be found with the award for change in the arbitral tribunal, which made the award. Perusal of the record shows that firstly the award was made by the arbitral tribunal on 30-9-2005. When second time a complaint was made, the only question to be decided by the arbitral tribunal was whether as alleged by the Respondent there was failure on the part of the Petitioner to deliver the movie by 30-11-2005. Award dated 30-9-2005 was accepted by both the sides and therefore, there was no dispute that the Petitioner would be liable to pay an amount of Rs.28,00,000/-

with interest, if the Respondent proves that there is failure on the part of the Petitioner in delivering the movie. Therefore, the question to be decided by the arbitral tribunal now was whether there was failure on the part of the Petitioner to deliver the movie as alleged by the Respondent. Therefore, the question to be decided by the arbitral tribunal, which passed the award dated 30-9-2005 and the arbitral tribunal which passed the award dated 7-1-2006, which is impugned in this petition, were totally different. Though they were interconnected. Therefore, I do not find any fault with the different arbitral tribunal constituted by the same trade-body considering that question.

6. The second ground on which the award is challenged is that the award does not disclose the reasons. As observed above, the award was made by consent of the parties dated 30-9-2005 and therefore, only question that was to be decided by the arbitral tribunal was whether there was failure on the part of the Petitioner, as alleged by the Respondent, in delivering the movie by 30-11-2005. That was the question of fact, which was raised by the Respondent and not disputed by the Petitioner and therefore, on

the basis of the material available before the tribunal, the tribunal has recorded that finding and I find from the award that there are reasons disclosed by the tribunal in recording those findings.

7. The third ground on which the award is challenged is that the arbitral tribunal has no jurisdiction to make the award.

8. Firstly, this objection was not raised before the arbitral tribunal and secondly in raising this ground the Petitioner is guilty of suppression of fact. The Petitioner has suppressed from the court that on 27-1-2005 he has signed the document stating therein that the trade-body, of which the arbitral tribunal had made the impugned award, shall have the jurisdiction to adjudicate the dispute between the parties. Really speaking the document dated 27-1-2005 is relevant and material for considering the ground raised by the Petitioner as to the jurisdiction of the arbitral tribunal of the trade-body. The Petitioner is guilty of suppression of material fact from the court, therefore for this sole reason the petition has to be rejected. The

petition has no substance. It is rejected. Petitioner to pay costs of this petition to the Respondent, as incurred by the Respondent.